IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7755 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

USHABEN VERSHIBHAI VAGHARI

Versus

COMMISSIONER OF POLICE RAJKOT

Appearance:

MS DR KACHHAVAH for Petitioner

Mr.H.L.Jani, learned A.G.P. for the respondents

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 18/02/2000

ORAL JUDGEMENT

This Special Civil Application is directed against the order of detention passed on 5.7.99 by the Police Commissioner, Rajkot City under the provisions of Gujarat Prevention of Anti Social Activities Act, 1985. On the basis of the said detention order she was directed to be detained in the Central Jail,Baroda by the Police

Commissioner, Rajkot City on 5.7.99 and on that basis she is under detention since 6.7.99. The grounds of detention dt.5.7.99, as were enclosed with the detention order, show that against the petitioner there are about 7 criminal cases under the Prohibition Act during the period 1997 to 1999. Out of these 7 cases under the Prohibition Act, 5 cases are pending in the Court and 2 cases were under investigation in which it is stated that there was a prima facie case for filing the charge sheet. It is also found from the grounds of detention that she was released by the trial court on bail in 5 cases, which are pending before the Court. The petitioner is said to be a bootlegger and there were allegations of bootlegging of 5 to 40 Lts. in these 7 cases and the said criminal cases pending against her with regard to bootlegging under the Prohibition Act are the sole basis for her detention. The detention order was confirmed by the Board on 13.8.99 and her representation against detention was also rejected on 22.9.99.

I called upon the learned A.G.P. to show as to how these allegations constitute a case of breach of public order. In view of the settled law, as laid down by the Supreme Court, all these allegations may constitute a case of breach of law and order and not that of public order and, therefore, the detention of the petitioner cannot be said to lawful detention permissible under the provisions of Gujarat Prevention of Anti Social Activities Act, 1985.

Accordingly the detention order dt.5.7.99 passed by the Police Commissioner, Rajkot City, therefore, cannot be sustained in the eye of law. The same is hereby quashed and set aside. It is directed that the petitioner shall be released forthwith if not required to be detained otherwise under any other detention order or in any other criminal case. This Special Civil Application is allowed. Rule is made absolute.

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